

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SITE REMEDIATION AND WASTE MANAGEMENT**

**DIVISION OF SOLID AND HAZARDOUS WASTE**

**Solid Waste Transporter Registration and Related Fees for Rail Carriers**

**Proposed Amendments:**

**N.J.A.C. 7:26-2B.1, 3.3, 3.5 and 4.1**

Authorized by:

Bradley M. Campbell, Commissioner,  
Department of Environmental  
Protection

Authority:

N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1  
et seq., 13:1D-125 et seq., 13:1E-9, 26:2C-  
et seq., 47:1A-1 et seq., 58:10-23.11, and  
58:10A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket No: \_\_\_\_\_

Proposal Number: \_\_\_\_\_:

Submit written comments by (no later than 60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number \_\_\_\_\_

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, New Jersey 08625-0402

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department of Environmental Protection (Department) requests that commenters submit comments on disks or CDs as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document can be viewed or downloaded from the Department's web page at [www.state.nj.us/dep/dshw](http://www.state.nj.us/dep/dshw).

The agency proposal follows.

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Solid Waste rules at N.J.A.C. 7:26 regulate the management of solid waste, including solid waste management by rail carriers. Subchapter Two of these rules requires, among other things, that rail carriers who operate solid waste transfer facilities obtain a permit and approval from the Department prior to receiving, processing, or transferring solid waste. Subchapter Three of these rules requires rail carriers that engage in solid waste transportation to submit an initial registration statement and periodic updates to the Department and to have an approved registration statement in order to transport waste. In addition, containers must be registered with the Department, and associated transporter fees paid.

In 1995, Congress enacted the Interstate Commerce Commission Termination Act (Pub. L. 104-88, 109 Stat. 803), codified at 49 U.S.C. §§ 10101 et seq. (the "Act"). The Act grants jurisdiction over transportation by rail carriers that is only by railroad or by railroad and water

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

when the transportation is under common control, management, or arrangement for a continuous carriage or shipment, to the Surface Transportation Board (STB). 49 U.S.C. § 10501(a). (The STB is an independent Federal agency within the Department of Transportation that replaced the Federal Interstate Commerce Commission and that now performs all the functions that were previously performed by the ICC as of the effective date of the Act.) The Act also grants the STB exclusive jurisdiction over transportation by rail carriers, and “the construction, acquisition, operation, abandonment, or discontinuance of . . . tracks, or facilities, even if the tracks are located, or intended to be located entirely in one State.” 49 U.S.C. § 10501(b). Accordingly, the Act preempts State and local regulation over rail carrier construction and operations, but does not preempt the State’s important role in enforcing Federal, State and local environmental laws and regulations.

On October 6, 2003, the Department proposed amendments and new rules to the Solid Waste Management Rules (see 35 N.J.R. 4405) in an effort to comport these rules with the Act. Pursuant to the proposal, rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars are exempt from the requirements of Subchapter 2, governing the disposal or nonhazardous solid waste, but are required to comply with the requirements of new Subchapter 2D, governing management of solid waste at rail carrier facilities.

The proposal also exempts rail carriers who engage in the transportation of solid waste in the State from the requirement at N.J.A.C. 7:26-3.2(b) of submitting a disclosure statement described in N.J.A.C. 7:26-16.4 with an application for approval of a registration statement. Finally, the proposal exempts rail carriers that transfer solid waste to or from rail cars from the regulations that govern the authorization and operation of intermodal container facilities at N.J.A.C. 7:26-3.6. The Department is adopting the proposed amendments to Subchapter 2, the new rules at Subchapter 2D and the exemption at subsection 3.6 as published elsewhere in this edition of the New Jersey Register.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department is not adopting the proposed exemption from the requirement at N.J.A.C. 7:26-3.2(b) of submitting a disclosure statement as a part of an approved registration statement, as that exemption was presented in the October 6, 2003 proposal because the Department does not believe this exemption goes far enough in light of the Act. That is, the Act may preempt the Department's authority to require at N.J.A.C. 7:26-3.2 that rail carriers apply for and obtain an approved registration statement (of which the disclosure statement is one part) prior to engaging in the transportation of solid waste in New Jersey. Additionally the Department has determined that the Act may also preempt the Department from requiring at N.J.A.C. 7:26-3.5(f)3 that rail carrier transporters register containers used to transport solid waste solely by rail, and assessing related transporter fees at N.J.A.C. 7:26-4.1(b).

Through this proposal, the Department is therefore proposing to amend the solid waste transporter regulations at N.J.A.C. 7:26, Subchapter 3 and the solid waste fee regulations at N.J.A.C. 7:26, Subchapter 4 to address their preemption by the Act with regard to rail carriers.

At N.J.A.C. 7:26-3.3(e), the Department is adding an exemption for rail carriers from the solid waste transporter registration requirements. At N.J.A.C. 7:26-3.5(e)1, the Department is adding the words "if applicable" at the end of the text, since rail carriers will have neither registration numbers or solid waste decal numbers to report. The Department proposes to delete N.J.A.C. 7:26-3.5(f), which requires all solid waste containers used to transport solid waste solely by rail to be registered with the Department. At N.J.A.C. 7:26-4.1(b)3, the Department is adding an exemption for rail carriers from related fees for solid waste vehicles and containers.

Lastly, through this proposal, the Department is clarifying that rail carriers are not subject to the specific additional design and construction requirements for solid waste transfer stations found in Subchapter 2B, by proposing an exemption from these requirements at N.J.A.C. 7:26-2B.1. The Department based the design and operational requirements for rail carriers codified at N.J.A.C. 7:26-2D, on the existing operational and design requirements of N.J.A.C. 7:26-2B.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Since rail carriers must comply with the applicable requirements of N.J.A.C. 7:26-2D, it would be duplicative for them to comply with the requirements of Subchapter 2B.

### **Social Impact**

The proposed rules exempting rail carriers from solid waste transporter registration requirements and related transporter fees will slightly reduce the cost and burden for rail carriers solid waste transportation activities. These benefits may create incentives for rail carriers to enter or expand solid waste operations. Shifting movement of freight from trucks to rail has the positive public benefit of reducing the use of fossil fuels thereby conserving fuel and decreasing emissions, decreasing highway congestion, improving road safety by reducing truck traffic, and decreasing the impact on publicly funded road maintenance and operations caused by truck traffic.

### **Economic Impact**

The Department expects a slight positive economic benefit for rail carriers by eliminating the need to initially prepare and update registration statements and pay related transporter fees. The state will experience a small decrease in collected revenues as a result of the fee exemption for rail carrier solid waste vehicles and containers. This reduction in revenue is not expected to affect the overall operation of the Department's transporter registration program, as rail carriers comprise only a small percentage of the total number of solid waste transporters in the State. While exemption from registration and associated fees may give rail transportation a slight economic advantage over other forms of solid waste transportation, this advantage is not expected to be significant enough to negatively affect competition in the solid waste transportation industry.

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

### **Environmental Impact**

The proposed exemptions in rail carrier registration and related transporter fees are expected to have no direct impact on the environment. Since all solid waste containers used to transport solid waste solely by rail are required to be marked with a unique number, one that can not be replicated by any other shipper, the Department will still be able to identify the ownership of such a container should a spill or other environmental cleanup situation occur. Additionally, if these reduced burdens encourage rail carriers to begin or expand solid waste transportation by rail, then adoption of the proposed exemptions may have a positive environmental impact by shifting freight movement from truck to rail resulting in fewer air emissions since trains emit less pollution per ton-mile than trucks.

### **Federal Standards Statement**

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The purpose of this rulemaking is to exempt rail carriers operating under the jurisdiction of the STB from the need to submit and obtain approval for solid waste transporter registration and pay related transporter fees. The proposed amendments will not exceed any Federal standard or requirement because they create an exemption from State regulation. Moreover, there are no Federal standards that specifically apply to the registration of solid waste transporters, their vehicles and containers and associated registration fees. Therefore, no comparison with Federal standards is required.

### **Jobs Impact**

The proposed rules exempting rail carriers from the need to submit and obtain approval

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

for solid waste transporter registration and pay related transporter fees is not expected to impact jobs in New Jersey. While rail carriers will experience a slight economic benefit and burden reduction from the exemptions, it is not expected to be significant enough that rail carriers will expand their operations substantially to create many new jobs or cause jobs to be lost in other transportation industries that compete with rail carriers for solid waste business

### **Agriculture Industry Impact**

The Department believes the proposed rules exempting rail carriers from solid waste transporter registration requirements and related fees will have no impact on the agricultural industry because the industry as a whole ships agricultural products, not waste, by rail.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are those which are resident in the State, independently owned and operated, not dominant in their field and which employ fewer than 100 full time employees. The Department has determined that the proposed exemptions for rail carriers from solid waste transporter registration requirements and related fees will not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses, rather they will reduce these requirements on rail carriers, some of which are likely to qualify as a small business under the Act.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments' impact on smart growth and the implementation of the State Plan. The amendments repeal solid waste registration and fee requirements for rail carriers. Because the new exemptions do not involve land use policies or infrastructure development, they are not expected to have any impact on the achievement of smart growth. The proposed amendments are not expected to have any impact on implementation of the State Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 26

### SOLID WASTE REGULATIONS

SUBCHAPTER 2B. ADDITIONAL SPECIFIC DISPOSAL REGULATIONS FOR THERMAL DESTRUCTION FACILITIES, TRANSFER STATIONS, MATERIALS RECOVERY FACILITIES, CO-COMPOSTING AND COMPOSTING FACILITIES

7:26-2B.1 Scope and applicability

(a) – (d) (No change.)

**(e) This subchapter does not apply to a rail carrier that transfers containerized or non-containerized solid waste to or from rail cars . For the purpose of this subchapter, the term “rail carrier” shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its behalf as part of its rail transportation services. However, a rail**



THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

**carrier that transfers containerized or non-containerized solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.**

### SUBCHAPTER 3. TRANSPORTATION

#### 7:26-3.3 Exemptions and conditions

(a) – (d) (No change.)

**(e) Rail carriers are exempt from the requirements to submit and obtain approved registration statements as set forth in N.J.A.C. 7:26-3.2. For the purpose of this subchapter, the term “rail carrier” shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency.**

#### 7:26-3.5 Transporter requirements (specific)

(a) – (d) (No change.)

(e) Each transporter, who hauls solid waste directly to out-of-State facilities from districts which have not designated an in-county weighing facility pursuant to N.J.A.C. 7:26-6, shall maintain a daily record of waste transported directly out-of-State. The record shall be retained for a period of at least one year or longer in the event of a unresolved enforcement action or at the Department's request. The daily record shall include but not be limited to the following information:

1. Identification of the transporter's DEP registration number and solid waste decal number, **if applicable**;

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

2. – 6. (No change.)

(f) Requirements concerning all solid waste intermodal containers used to transport solid waste solely by rail follow:

1. – 2. (No change.)

[3. All solid waste containers used to transport solid waste solely by rail shall be registered with the Department in accordance with N.J.A.C. 7:26-3.2 and pay fees in accordance with N.J.A.C. 7:26-4.4.]

#### SUBCHAPTER 4. FEES FOR SOLID WASTE

##### 7:26-4.1 General Provisions

(a) (No change.)

(b) **The persons identified at (b)1 through 3 below are exempt from the fee requirements applicable to transporters of solid waste as set forth at N.J.A.C. 7:26-4.4:**

**1.** Persons transporting only their own household refuse in vehicles bearing passenger license plates [or persons];

**2.** **Persons** transporting their own solid waste in vehicles registered with a motor vehicles agency as having a maximum gross vehicle weight of 9,000 pounds for a single vehicle or 16,000 pounds combined maximum gross vehicle weight for a vehicle pulling a trailer, and claiming said exemption under N.J.A.C. 7:26-3.3[, need not pay any solid waste fee to the Department. Any person transporting solid waste who does not meet the criteria for exemption under this subsection shall be subject to the fee requirements applicable to transporters of solid waste set forth at N.J.A.C. 7:26-4.4.]; **and**

**3.** **Rail carriers that transport solid waste by rail. For the purpose of this subchapter, “rail carrier” shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been issued a certificate or license, approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency.**

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(c) (No change.)

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NOVEMBER 15, 2004 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

---

Date

---

Bradley M. Campbell, Commissioner  
Department of Environmental Protection